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Board of Vocational Nursing
and Psychiatric Technicians

8 **BEFORE THE**
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. VN-2009-2011

12 **MICHAELA JOY DIEMER**
13 **5265 Toscana Way #2110**
San Diego, CA 92122

A C C U S A T I O N

14 **Vocational Nurse License No. VN 230807**

15 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in
20 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric
21 Technicians, Department of Consumer Affairs.

22 2. On or about November 16, 2007, the Board of Vocational Nursing and Psychiatric
23 Technicians issued Vocational Nurse License Number VN 230807 to Michaela Joy Diemer
24 (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to
25 the charges brought herein and will expire on November 30, 2011, unless renewed.

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4. Section 118, subdivision (b) of the Business and Professions Code (Code) provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

STATUTORY PROVISIONS

7. Section 493 of the Code states:

As used in this section, “license” includes “certificate,” “permit,” “authority,” and “registration.”

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of the following:

1 (a) Unprofessional conduct, which includes, but is not limited to, the
2 following:

3

4 (f) Conviction of a crime substantially related to the qualifications, functions,
5 and duties of a licensed vocational nurse, in which event the record of the conviction
6 shall be conclusive evidence of the conviction.

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8 9. Section 2878.5 of the Code states:

9 In addition to other acts constituting unprofessional conduct within the meaning
10 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for
11 a person licensed under this chapter to do any of the following:

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13 (b) Use any controlled substance as defined in Division 10 of the Health and
14 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic
15 beverages, to an extent or in a manner dangerous or injurious to himself or herself,
16 any other person, or the public, or to the extent that the use impairs his or her ability
17 to conduct with safety to the public the practice authorized by his or her license.

18 (c) Be convicted of a criminal offense involving possession of any narcotic or
19 dangerous drug, or the prescription, consumption, or self-administration of any of the
20 substances described in subdivisions (a) and (b) of this section, in which event the
21 record of the conviction is conclusive evidence thereof.

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23 REGULATIONS

24 10. California Code of Regulations, title 16, section 2521, states:

25 For the purposes of denial, suspension, or revocation of a license pursuant to
26 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
27 crime or act shall be considered to be substantially related to the qualifications,
28 functions or duties of a licensed vocational nurse if to a substantial degree it
evidences present or potential unfitness of a licensed vocational nurse to perform the
functions authorized by his license in a manner consistent with the public health,
safety, or welfare. Such crimes or acts shall include but not be limited to those
involving the following:

(a) Procuring a license by fraud, misrepresentation, or mistake.

(b) A conviction of practicing medicine without a license in violation of
Chapter 5 of Division 2 of the Business and Professions Code.

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1 (c) Violating or attempting to violate, directly or indirectly, or assisting in or
2 abetting the violation of, or conspiring to violate any provision or term of Chapter
6.5, Division 2 of the Business and Professions Code.

3 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,
4 whether a licensed physician or not, in the performance of or arranging for a violation
of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and
Professions Code.

5 (e) Conviction of a crime involving fiscal dishonesty.

6 (f) Any crime or act involving the sale, gift, administration, or furnishing of
7 "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the
8 Business and Professions Code.

9 11. California Code of Regulations, title 16, section 2522, states:

10 When considering a) the denial of a license under Section 480 of the Business
11 and Professions Code, b) the suspension or revocation of a license on the ground that
12 a licensee has been convicted of a crime, or c) a petition for reinstatement of a license
under Section 2787.7 of the Business and Professions Code, the Board in evaluating
13 the rehabilitation of an individual and his or her present eligibility for a license, will
consider the following criteria:

14 (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.

15 (2) Actual or potential harm to the public.

16 (3) Actual or potential harm to any patient.

17 (4) Overall disciplinary record.

18 (5) Overall criminal actions taken by any federal, state or local agency or court.

19 (6) Prior warnings on record or prior remediation.

20 (7) Number and/or variety of current violations.

21 (8) Mitigation evidence.

22 (9) In case of a criminal conviction, compliance with terms of sentence and/or
court-ordered probation.

23 (10) Time passed since the act(s) or offense(s) occurred.

24 (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to
25 Penal Code section 1203.4.

26 (12) Cooperation with the Board and other law enforcement or regulatory
agencies.

27 (13) Other rehabilitation evidence.

1 **COSTS**

2 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licensee found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(March 19, 2009 Criminal Conviction for DUI on September 6, 2008)**

8 13. Respondent has subjected her license to disciplinary action under sections 490 and
9 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
10 related to the qualifications, functions, and duties of a licensed vocational nurse. The
11 circumstances are as follows:

12 a. On or about March 19, 2009, in a criminal proceeding entitled *People of*
13 *the State of Nevada vs. Michaela Diemer*, in Clark County Justice Court (Las Vegas Township),
14 case number 08M27363X, Respondent was convicted on her plea of nolo contendere of violating
15 Nevada Revised Statutes (NRS) section 484.379, driving and/or being in the actual physical
16 control while under the influence of intoxicating liquor with a concentration of alcohol of .08 or
17 more, a misdemeanor.

18 b. As a result of the conviction, on or about March 19, 2009, Respondent was
19 sentenced to two days in jail with credit for two days, and ordered to complete DUI school and a
20 Victim Impact Panel. Respondent was further ordered to stay out of trouble, and pay fines and
21 fees in the amount of \$580.

22 c. The facts that led to the conviction were that on or about September 6, 2008, in
23 Las Vegas, Nevada, Respondent was arrested by law enforcement officers for driving under the
24 influence of alcohol.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)**

27 14. Respondent has subjected her license to disciplinary action under section
28 2878.5, subdivision (b) of the Code in that on or about September 6, 2008, Respondent used

1 alcohol in a manner dangerous or injurious to herself and others, in that she operated a motor
2 vehicle on a public roadway with blood alcohol concentration (BAC) in excess of 0.08 percent, as
3 described in paragraph 13, above.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct - Criminal Conviction Involving the Consumption of Alcohol)**

6 15. Respondent has subjected her license to disciplinary action under section 2878.5,
7 subdivision (c) of the Code in that on or about March 19, 2009, Respondent pled nolo contendere
8 and the court found her guilty and convicted her of driving with a BAC of 0.08 percent or higher,
9 as described in paragraph 13, above.

10 **DISCIPLINARY CONSIDERATION**

11 16. To determine the degree of discipline, if any, to be imposed on Respondent,
12 Complainant alleges:

13 a. On or about May 22, 2001, in a criminal proceeding entitled *People of the State of*
14 *Ohio v. Micheala J. Diemer*, case number 2001TRC00049R, Respondent was convicted on her
15 plea of guilty of violating Ohio Revised Code (ORC) section 4511.19A11, operating a vehicle
16 under the influence of alcohol on December 29, 2000. As a result of the conviction, Respondent
17 was sentenced to 60 days in jail, ordered to pay fines and fees in the amount of \$550, and her
18 driver's license was suspended for 365 days. The court suspended the jail sentence, \$300 of
19 fees/fines, as well as the license suspension.

20 b. On or about June 27, 2001, in a criminal proceeding entitled *People of the State of*
21 *Ohio v. Micheala J. Diemer*, in Bedford Municipal Court (Ohio), case number 01CRB00946,
22 Respondent was convicted on her plea of guilty of violating Ordinance 606.14A (obstructing
23 official business) and Ordinance 612.07 (open container of alcohol in a moving vehicle),
24 misdemeanors, on April 28, 2001. As a result of the conviction, Respondent was ordered to pay
25 \$600 in fines plus costs.

26 c. On or about October 8, 2003, in a criminal proceeding entitled *People of the State of*
27 *Ohio v. Michaela J. Diemer*, case number TRC0306096, Respondent was convicted on her plea
28 of no contest to violating ORC 4511.19A1 (driving under the influence of alcohol), and 331.34

1 (weaving) on October 1, 2003. Respondent further refused to submit to a breath test. As a result
2 of the conviction, Respondent was sentenced to 180 days in jail (160 days were suspended),
3 payment of \$1,650 in fees and fines (\$1,235 were suspended), and Respondent's driving
4 privileges were suspended for three years. Respondent was further ordered to complete a
5 Chemical Dependency Assessment, and her vehicle was immobilized for 90 days.

6 d. In a letter to Respondent dated October 31, 2007, an Enforcement Analyst of the
7 Board advised Respondent that the Board had completed a review of Respondent's conviction
8 history related to her application for licensure in the State of California. Respondent was
9 informed that her prior convictions were substantially related to the vocational nurse license, but
10 that the Board would not pursue a denial of Respondent's application based upon the fact that she
11 was complying with the terms and conditions of her sentencing and had no subsequent
12 convictions. Respondent was warned that future substantiated reports of similar behavior, or
13 other violations of the law or violations of regulations governing the practice of a vocational
14 nurse could result in disciplinary action against Respondent's license.

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1 PRAYER

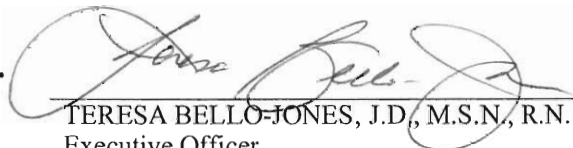
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
4 issue a decision:

5 1. Revoking or suspending Vocational Nurse License Number VN 230807, issued to
6 Michaela Joy Diemer.

7 2. Ordering Michaela Joy Diemer to pay the Board of Vocational Nursing and
8 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
9 pursuant to Business and Professions Code section 125.3;

10 3. Taking such other and further action as deemed necessary and proper.

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12 DATED: November 23, 2010.


TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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